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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 RODNEY BROOKS,

11 Plaintiff,

12 v.

13 A. MUNOZ, *et al.*,

14 Defendants.

Civil No. 10cv0277 JAH(NLS)

ORDER:

(1) GRANTING PLAINTIFF'S
MOTION FOR AN ORDER
DIRECTING THE ATTORNEY
GENERAL TO PROVIDE
FORWARDING ADDRESS; AND

(2) GRANTING PLAINTIFF'S
MOTION FOR AN EXTENSION
OF TIME TO SERVE
DEFENDANT CONTRERAS
PURSUANT TO
FED.R.CIV.P. 4(m)

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19 On February 3, 2010, Rodney Brooks ("plaintiff"), a state prisoner currently
20 incarcerated at the California Correctional Institution in Tehachapi, California, and
21 proceeding *pro se*, submitted a civil rights complaint pursuant to 42 U.S.C. § 1983. On
22 March 3, 2010, this Court found that the claims in plaintiff's complaint were sufficient
23 to survive the initial screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and
24 directed the United States Marshal Service ("USMS") to effect service on plaintiff's behalf
25 pursuant to 28 U.S.C. § 1915(d) and FED.R.CIV.P. 4(c)(3). *See* Doc # 5.

26 The Clerk of Court issued a summons and prepared an "IFP package," including
27 certified copies of plaintiff's complaint, a U.S. Marshal Form 285 ("USMS Form 285")
28 for each defendant named in the complaint, and a copy of the Court's Order granting

1 plaintiff leave to proceed IFP. *See Puett v. Blandford*, 895 F.2d 630, 634 (9th Cir. 1990)
 2 (“An incarcerated pro se plaintiff proceeding *in forma pauperis* is entitled to rely on the U.S.
 3 Marshal for service of summons and complaint.”); 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(a),
 4 (c)(3).

5 Service upon defendants Steele, Reid, Munoz, Talbert, Cobb, Edrozo, and Morris
 6 was executed by the USMS and waivers of personal service were filed on their behalf.
 7 Docs. # 8-14. However, the summons was returned unexecuted as to defendant E.
 8 Conteras. Doc. # 7. According to the USMS, they were informed by the litigation
 9 coordinator at Richard J. Donovan Correctional Facility (“RJDCF”) that this defendant
 10 was not employed at the facility. *See id.*

11 Rule 4 of the Federal Rules of Civil Procedure provides that:

12 [i]f a defendant is not served within 120 days after the
 13 complaint is filed, the court – on motion or on its own after
 14 notice to the plaintiff – must dismiss the action without
 15 prejudice against that defendant or order that service be made
 within a specified time. But if the plaintiff shows good cause
 for the failure, the court must extend the time for service for an
 appropriate period.

16 FED.R.CIV.P. 4(m).

17 In cases involving a plaintiff proceeding IFP, a United States Marshal, upon order
 18 of the court, shall serve the summons and the complaint. FED.R.CIV.P. 4(c)(3); 28 U.S.C.
 19 § 1915(d). “[A]n incarcerated pro se plaintiff proceeding *in forma pauperis* is entitled to
 20 rely on the U.S. Marshal for service of the summons and complaint and ... should not be
 21 penalized by having his action dismissed for failure to effect service where the U.S.
 22 Marshal or the court clerk has failed to perform his duties.” *Walker v. Sumner*, 14 F.3d
 23 1415, 1422 (9th Cir. 1994) (quoting *Puett*, 912 F.2d at 275), *abrogated on other grounds by*
 24 *Sandin v. Conner*, 515 U.S. 472 (1995). “So long as the prisoner has furnished the
 25 information necessary to identify the defendant, the marshal’s failure to effect service is
 26 ‘automatically good cause....’” *Walker*, 14 F.3d at 1422 (quoting *Sellers v. United States*,
 27 902 F.2d 598, 603 (7th Cir. 1990)). However, where a pro se plaintiff fails to provide the
 28 Marshal with accurate and sufficient information to effect service of the summons and

complaint, the court's sua sponte dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22; *see also* Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987) (noting that plaintiff "may not remain silent and do nothing to effectuate such service"; rather, "[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has knowledge"). Here, because plaintiff has not yet been able to ascertain the proper location where defendant E. Contreras may now be served, he must remedy the situation or face dismissal of his claims against him. *See Walker*, 14 F.3d at 1421-22 (holding prisoner failed to show cause why prison official should not be dismissed under Rule 4(m) where prisoner failed to show he had provided Marshal with sufficient information to effectuate service). Thus, as long as defendant E. Contreras' forwarding address can be easily ascertained by reference to the RJDFC's personnel records, plaintiff is entitled to rely on the U.S. Marshal to effect service upon this defendant on his behalf. *See Puett*, 912 F.2d at 275. The Court hereby directs the Deputy Attorney General assigned to this case to contact the Litigation Coordinator at RJDFC or the RJDFC's Legal Affairs Division, if necessary, and provide a current address for defendant E. Contreras within the RJDFC's records or possession, and to forward that address to the USMS in a confidential memorandum.

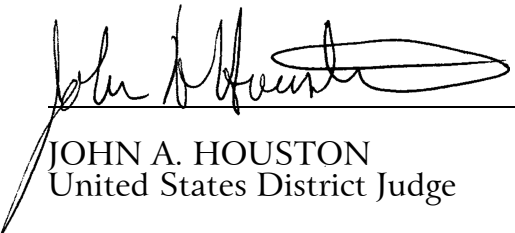
Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for enlargement of time to effect service on defendant E. Contreras and request for order directing the U.S. Marshal to effect service of summons on defendant Contreras [doc. # 17] is **GRANTED**;
2. The Deputy Attorney General assigned to this case shall provide the forwarding address for defendants E. Contreras to the U.S. Marshal in a *confidential memorandum* indicating that the summons and complaint is to be delivered to that address on or before **July 1, 2010**;
3. Within thirty (30) days of receipt of any available address from the Attorney General, the U.S. Marshal shall serve a copy of plaintiff's complaint and summons upon defendant E. Contreras. All costs of service shall be

1 advanced by the United States pursuant to the Court's March 1, 2010 order
2 granting plaintiff leave to proceed IFP and directing service pursuant to
3 28 U.S.C. § 1915(d) and FED.R.CIV.P. 4(c)(3); and

- 4 4. The Clerk of the Court shall provide a copy of: (1) the Court's March 1,
5 2010 order [doc. #5]; (2) this Order; (3) the complaint, summons and a
6 blank U.S. Marshal Form 285 to the Attorney General for purposes of re-
7 attempting service as to defendant E. Conteras

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9 DATED: June 21, 2010

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11 JOHN A. HOUSTON
12 United States District Judge
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